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No. 1047

In the Supreme Court of the United States

October Term, 1968

CITY OF CHICAGO and BOARD OF TRADE OF THE CITY OF CHICAGO, Appellants

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ILLINOIS CENTRAL RAILROAD COMPANY, et al.

On Appeal from the United States District Court For the Northern District of Illinois

BRIEF AMICUS CURIAE IN SUPPORT OF JURISDICTIONAL STATEMENT

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INTRODUCTION

This brief amicus curiae is filed herein, pursuant to Supreme Court Rule 42(4), in support of the Jurisdictional Statement of the Appellants, by the State of Ohio, by its Counsel, the Attorney General of Ohio, Hon. Paul W. Brown.

The State of Ohio feels that the issues now being presented to the Court are of vital concern to the State. The State of Ohio supports the Jurisdictional Statement of the Appellants with regard to the issues presented. By this brief amicus curiae, the State of Ohio does not intend to broaden the questions presented to this Honorable Court nor to develop the legal authorities upon which this contro-

versy is founded. Rather it is the purpose hereof to request this Court to give a dispositive ruling concerning the correct interpretation of Section 3(1) of the Interstate Commerce Act.

THE QUESTIONS ARE SUBSTANTIAL

In 1959, with the completion of the St. Lawrence Seaway, the State of Ohio became involved with deep-water port activities. Such activities are becoming vital to economic growth and development of this State.

Ohio being seasonal and with its deep-water ports being relatively new must compete for export traffic with older, fully developed year-round tidewater ports, through which shipping patterns have been established over the years. If the Commission is allowed to deprive Chicago of the advantages of location (and, in turn, the Ohio ports) by permitting rail carriers to equalize rates to competing ports for distances several times as great as those to Chicago, and if this rule is applied to Ohio ports, then Ohio can never really develop her world ports to their fullest potential.

The economic impact to the Ohio ports and all of the Great Lakes ports of the resolution of the questions presented in this case is of vital economic concern. The continued existence of the Ohio ports may well depend upon the acceptance of this case for presentation upon its merits. How the Commission can justify one disparate rate on the basis of port equalization and another on the basis of inland transportation competition by a port with a rail carrier serving that port is irreconcilable. Such a justification has the impact of ignoring the existence of the Great Lakes ports. The legal theory, on which the Commission proceeded—that undue preference and prejudice cannot result from an equality of rates regardless of distance traveled—was exposed ages ago.

Therefore, it becomes vital for the economic growth and development of this State that the questions be resolved.

CONCLUSION

For the foregoing reasons, we submit that the questions presented are substantial and are of public importance and that the Court should note jurisdiction of this appeal; or, in the alternative, if the Court should believe that it is necessary or desirable that the District Court first pass on these questions, this Court should vacate the judgment of the District Court and remand the cause to that Court with instructions to decide the questions of law presented.

Respectfully submitted,

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